

FOND DU LAC RESERVATION
RESPONSIVENESS SUMMARY: WATER QUALITY STANDARDS
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During the development of tribal Water Quality Standards for Fond du Lac Reservation, a process which has taken over three years, the Environmental Program has at several stages sought technical input from the Minnesota Pollution Control Agency and the U.S. Environmental Protection Agency. In late 1997 and early 1998, we received comments about our draft standards from both agencies regarding omissions, typographical errors, and clarifications (in text, definitions, references to methodologies, and in geographical information about the listed water bodies) which were all duly noted and corrected in future drafts. Finally, in July of 1998, after producing an informational brochure about our proposed standards, distributing draft copies in public areas, and publicizing notice in three local newspapers, the Environmental Program scheduled two open meetings to discuss the standards, answer questions, and receive input from the community.

Prior to the open meeting date of July 23, 1998, the Environmental Program received further comments from MPCA, discussing the changes that had been incorporated into the working draft. Most of these comments addressed minor typographical errors, terminology, and clarifying issues related to the complete deletion of references to Minnesota Rules, an action undertaken after discussion with the Fond du Lac Legal Office. In a conference call with technical staff from MPCA and USEPA Region 5, Environmental Program staff deliberated the second round of comments, and concurred with their suggestions concerning definitions, simple editing and clarification of text, but had additional changes to the Stoney Brook legal description (including the ditch network), and opted to leave out language concerning "actions and activities that do not trigger a nondegradation demonstration". Since the Fond du Lac Reservation does not currently have or anticipate any dischargers, Environmental Program staff felt that other language in the document was sufficiently protective.

Written comments on the draft submitted for public notice were sent to Fond du Lac by the MPCA, USEPA Region 5, and from the Water Quality Specialist at Grand Portage Reservation. A summary of the contents of these comments, and the Fond du Lac responses are as follows:

MPCA:

- Section 601 Applicability. Citations referring to drinking water standards do not apply to other pollutants corresponding to designated uses; Fond du Lac will rely upon narrative standards language to cover pollutants not covered by Great Lakes Water Quality Initiative (GLI) Guidance, and may subsequently develop standards in future revisions when more Reservation surface water data is available.
- Conversion factors for transforming total metals to dissolved metals have been added to Appendix 2.
- Provisions of the EPA WQ Standards Handbook which address aquatic life were adopted and incorporated by reference.
- References to a fish consumption rate of 0.06 kg/day, as a basis for contaminant standards, were placed in Section 601. Fond du Lac based this subsistence consumption rate upon a

1991-92 Michigan sport anglers study, which would be protective up to the 90th percentile of fish consumers.

- MPCA offered to recalculate water quality standards to reflect the 0.06kg/day fish consumption rate, and did provide the revised figures to Environmental staff.
- Section 707 was edited to distinguish that less stringent site-specific standards were the focus of items a. and b.
- Definitions for acute and chronic toxic units (TUa's and TUc's) were added to Chapter 2.
- Citations in Sections 801 and 803 were clarified.
- Language was inserted in Section 808, item b. to require anyone seeking a permit for a variance to the standards to provide a list and schedule of activities to assure reasonable progress towards attaining water quality standards.
- Mercury standards reflecting a tribal fish consumption rate of 0.06 kg/day were corrected.
- PCB human health chronic standards were changed to reflect EPA's change in the PCB cancer potency factor.

USEPA Region 5:

- Fond du Lac's standards appear to be as protective as the GLI Guidance.
- The standards may not provide adequate protection from impacts due to pollutants excluded from the Guidance (ammonia, bacteria, chlorine); Fond du Lac used narrative criteria for nutrients and added numeric bacterial standards (Appendix 3) for waters designated as primary contact recreational. After several years of a comprehensive baseline water quality monitoring program, future revisions of tribal standards may include more specific ammonia, phosphorus and chlorine values.
- Fond du Lac acknowledges that tribal authority is limited to the water quality standards program, and not as a permitting authority for the NPDES program; however the RBC will have the authority to certify or deny certification that NPDES permits issued by USEPA are consistent with tribal water quality standards.
- In accordance with federal regulations, a public hearing on the Water Quality Standards will be held at least once every three years.
- Language was changed to clear any ambiguity about whether or not a lowering of water quality is permitted in a high quality water.
- Section 105 b. was renamed "Lowering of Water Quality", and predicted or observed reduction in biological or chemical integrity was defined as the criteria for triggering a review.
- Section 105 b.4.- Since the RBC is not currently the permitting authority, language was changed to "appropriate permitting authority".
- Section 105 d. - As no changes or revisions are contemplated as a result of an antidegradation review, the phrase "prior to adoption of such changes or revisions by the RBC" was deleted.
- Fond du Lac Environmental staff opted not to delete a portion of the antidegradation definition, as it was felt that the existing definition conveyed the intent of the standards.
- In the definition for control document, the phrase "or other appropriate permitting authority" was inserted to allow for permits issued by USEPA, US Army Corps of Engineers, or others.
- In the definition for expanded discharge, "BCC" was replaced with "pollutants" to ensure that antidegradation could be applied to expanded discharges of nonBCCs.
- Environmental staff opted not to include a definition of the term "natural".
- The definition of Outstanding Reservation Resource Waters (ORRW) was amended to reflect

- designation by the RBC, as it brings about a higher level of protection.
- Environmental staff opted not to include definitions of “pollutant” or “pollutant minimization plan”, and also opted not to add a definition for “reservation waters”, as it was felt that was clarified in Section 103 (Scope).
 - Section 302 b. - The phrase “and prey” was added to the wildlife standards, to protect wildlife from adverse effects due to exposure via consumption of contaminated aquatic organisms.
 - Section 701 (Applicability) - Bioaccumulation was added as a factor that should be considered in a site-specific study.
 - Section 705: The title was amended to “Site-Specific Modifications to protect threatened and endangered species.”
 - Section 801 b.1. - Specific citations were added to describe stream flows used in calculating dilution.
 - Section 806 a.1. - The acronym “GLI” preceding “pollutants” was deleted, providing for variances on other than GLI pollutants.
 - Section 807 - Amended to conform to GLI Guidance, in requiring Fond du Lac to provide notice to other Great Lakes States and Tribes when granting a variance.
 - Section 808 - Revised to acknowledge permitting authority, while retaining legal standing to challenge the permitting authority regarding variance application submittals.
 - In Section 806 (Conditions to Grant) , it was noted that all variances and site-specific criteria require the approval of USEPA.

Grand Portage Reservation:

- Acknowledged Fond du Lac’s Water Quality Standards as the first tribal-specific standards to be adopted in the state of Minnesota, and the significance of providing protections necessary for spiritual and cultural uses of water.
- Acknowledged the precedence set in Fond du Lac standards by the use of a 0.06 kg/day fish consumption rate, which is more protective of human health in subsistence fishing tribal populations than GLI standards.
- Acknowledged the special designation “Outstanding Reservation Resource Waters”, which was included in Fond du Lac standards to maintain and protect exceptional water bodies, and specifically exclude variances for new point source discharges of BCCs.

In attendance at the open meetings on July 23, 1998 were representatives from MPCA’s Water Quality Standards division, USEPA Region 5 Water Division, Fond du Lac Environmental Program staff, members of the Fond du Lac Reservation Business Committee, the consultant who assisted Fond du Lac Environmental staff in drafting the Standards document, less than a dozen Fond du Lac band members, and several members of the Big Lake Association. Comments offered at both meetings were without exception congratulatory, and Environmental staff responded to questions and clarified objectives concerning the proposed standards and monitoring program.

A final draft of the Reservation Water Quality Standards, inclusive of the revisions noted above, has been prepared along with a formal Resolution for adoption by the Reservation Business Committee.